IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 883 of 2000

in

SPECIAL CIVIL APPLICATIONNo 868 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DIVISIONAL CONTROLLER

Versus

KADARBHAI J SUTHAR

Appearance:

1. LETTERS PATENT APPEAL No. 883 of 2000

MR HARDIK C RAWAL for Appellant No.

MR BB NAIK for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.P.BUCH

Date of decision: 27/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Admit. Mr B B Naik, learned Advocate appearing for the respondent waives service of notice of admission. At the request of the learned Advocates for the parties, this appeal is finally heard today.

2. In this appeal, the appellant-Gujarat State Road Transport Corporation (hereinafter referred to as 'the Corporation') has challenged the validity of the judgment delivered in Special Civil Application No.868/91 dated 21.9.2000. By virtue of the said judgment, award passed by the Labour Court, Ahmedabad in Reference (LCA) No.542/87 dated 11.5.1990 has been modified to the effect that the appellant-Corporation has been directed to pay complete backwages to the respondent-workman with interest @ 6% per annum from the date on which the backwages had become payable to the respondent-workman.

3. The facts giving rise to the present litigation in a nutshell are as under:

Respondent is a driver who is working under the appellant Corporation. While driving the vehicle belonging to the appellant Corporation, the respondent had met with an accident and as a result of the accident, a child aged 8 years had expired. A criminal case was filed against the respondent-workman but in the criminal case, the respondent-workman had been acquitted. Motor Accident Claim Petition was also filed against the respondent-workman and the appellant Corporation. The said Claim Petition was allowed and the appellant as well as the respondent-workman were directed to pay compensation to the heirs of the deceased child. A departmental enquiry had also been initiated against the respondent-workman and in the enquiry it was found that the workman was guilty of the misconduct and, therefore, he was dismissed from service. Being aggrieved by the order of dismissal, the respondent-workman had initiated legal proceedings and ultimately the matter had been referred to the Labour Court. By an award, the Labour Court directed that the respondent-workman should be reinstated in service but without backwages. The said award dated 11.5.1990 was challenged by the respondent-workman by filing Special Civil Application No.868/91 before the learned Single Judge. It was submitted on behalf of the respondent-workman that the respondent-workman was not guilty of the alleged misconduct as he had been acquitted in the criminal case,

and therefore, it was not open to the Labour Court to deprive the respondent-workman of the backwages. On the other hand, before the learned Single Judge it was submitted on behalf of the appellant-Corporation that in the Motor Accident Claim Petition, the tribunal had decided that the respondent workman was at fault and, therefore, compensation was also awarded to the heirs of the child. It was therefore, submited on behalf of the appellant-Corporation that the award passed by the Labour Court was improper and the order of dismissal was just and proper.

4. Learned Single Judge came to the conclusion that there was no misconduct on the part of the respondent-workman and, therefore, the Labour Court ought not to have deprived the respondent workman of the backwages. The learned Single Judge also awarded interest @ 6% to the respondent-workman on the amount of backwages payable to him

5. Learned Advocate Mr Hardik Raval has appeared for the appellant-Corporation whereas Mr B B Naik, learned Advocate has appeared for the respondent-workman. After hearing the learned Advocates, the appeal was admitted and looking to the facts of the case, learned Advocate Mr Naik appearing for the respondent-workman has fairly submitted that the respondent-workman is prepared to forego 25% of the backwages awarded to him as in the Motor Accident Claim Petition the tribunal had come to the conclusion that there was some fault on the part of the respondent-workman as a driver.

6. In our opinion, ends of justice would be served if the entire amount of backwages is not paid to the respondent. Upon perusal of the award of the tribunal in the Motor Accident Claim Petition, it appears that there was some fault on the part of the driver. The Labour Court had directed that no backwages should be paid to the respondent-workman by way of punishment. In view of the said fact, in our opinion the workman could not have been reinstated with 100% backwages. In the circumstances, looking to the concession given by the learned Advocate and the workman, we direct that instead of 100% backwages, 75% of the backwages be paid to the respondent workman without any interest thereon and the order of the learned Single Judge is quashed and set aside to the above extent. Learned Advocate for the respondent-workman has submitted that 75% of the backwages be paid to the respondent-workman with interest. In our opinion, it would not be proper to award any interest on the 75% of the backwages payable to

the respondent-workman. We direct that the amount of backwages as aforesaid shall be paid within a period of three months from today. It has been apprehended by Mr B B Naik, learned Advocate that the amount might not be paid to the respondent-workman even within the said period of three months. We do not see any reason for having such an apprehension. However, we direct that if the amount of backwages is not paid to the respondent-workman within 3 months from today, the appellant-Corporation shall pay interest @ 8% on the backwages commencing from the date after three months from today till the date of payment.

The appeal stands disposed of as allowed with no order as to costs.

27.9.2001 [A R Dave, J.]

[D P Buch, J.]
msp